Denart Coal Co., Inc. and its alter ego, V. Coal Co., Inc.; Laing Enterprises; Vance Trucking; Delores Vance d/b/a D & J Trucking, a sole proprietorship; Don Vance; Don E. Vance; and Michael Vance *and* United Mine Workers of America, District 17. Case 9–CA–25650

January 28, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS CRACRAFT AND OVIATT

On August 14, 1989, the National Labor Relations Board issued an Order in this proceeding,[1] adopting, in the absence of exceptions, the administrative law judge's recommended Order that the Respondents, Denart Coal Co., Inc. (Denart Coal) and its alter ego V. Coal Co., Inc. (V. Coal), inter alia, make whole former and current employees for losses resulting from its unfair labor practices. On March 1, 1990, the United States Court of Appeals for the Fourth Circuit enforced the Board's Order in full.[2] On June 4, 1990, the Regional Director for Region 9 issued a compliance specification and notice of hearing, alleging that a controversy had arisen over the amount of money due under the terms of the Board's Order and the identity of the entities responsible for payment, and notifying the Respondents that they must file a timely answer that must comply with the Board's Rules and Regulations.

The Respondents, Laing Enterprises, Vance Trucking, Delores Vance d/b/a D & J Trucking, a sole proprietorship, Don Vance, Don E. Vance, and Michael Vance (collectively the additional Respondents) filed an answer. The answer, inter alia, denied that the Respondent Companies constituted a single employer with the Respondents, Denart Coal and V. Coal, and denied that the individual Respondents were personally liable for the amounts due, as alleged in paragraphs 1–4 of the specification. The answer also claimed insufficient information to admit or deny the allegations concerning the specific backpay assignments for each discriminatee, medical expenses, trust fund obligations, and calculated total amounts alleged in paragraphs 5(e), 6, 7, and 8, respectively.

The Respondents, Denart Coal and V. Coal, did not file an answer to the compliance specification. On September 7, 1990, counsel for the General Counsel wrote to the Respondents, Denart Coal and V. Coal, informing them that if an answer was not filed by September 14, 1990, a Motion for Summary Judgment would be filed. Respondents Denart Coal and V. Coal later advised counsel for the General Counsel by telephone that they would not file an answer because they lacked assets and were no longer doing business.

On October 9, 1990, the General Counsel filed with the Board in Washington, D.C. a Motion for Partial Summary Judgment and Motion to Preclude Respondents from Controverting Certain Allegations of the Compliance Specification and Memorandum in Support. Subsequently on October 11, 1990, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the General Counsel's motions should not be granted.

The additional Respondents filed a memorandum in opposition to the General Counsel's motion. Respondents Denart Coal and V. Coal have not filed any response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On the entire record in this case, the Board makes the following

Ruling on Motion for Partial Summary Judgment and Motion to Preclude Respondents from Controverting Certain Allegations of the Compliance Specification

Section 102.56(b) and (c)[3] of the National Labor Relations Board's Rules and Regulations states:

> (b) *Contents of answer to specification.*—The answer shall specifically admit, deny, or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. Denials shall fairly meet the substance of the allegations of the specification at issue. When a respondent intends to deny only a part of an allegation, the respondent shall specify so much of it as is true and shall deny only the remainder. As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, the answer shall specifically state the basis for such disagreement, setting forth in detail the respondent's position as to the applicable premises and furnishing the appropriate supporting figures.
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> (c) *Effect of failure to answer or to plead specifically and in detail to backpay allegations of specification.*—If the respondent fails to file any answer to the specification within the time pre-

[1] Not reported in Board volumes.

[2] No. 90–1004 (unpublished).

[3] Formerly Sec. 102.54(b) and (c). The Board amended its rules governing compliance proceedings effective November 13, 1988. The substance of former Sec. 102.54 has been incorporated into Sec. 102.56 as revised.

> scribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate. If the respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required by paragraph (b) of this section, and the failure so to deny is not adequately explained, such allegation shall be deemed to be admitted to be true, and may be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting the allegation.

In his motion, the General Counsel alleges that with respect to paragraphs 5(e), 7, and 8 of the compliance specification, the additional Respondents failed to file an answer conforming to the requirements of Section 102.56. The General Counsel contends that the Respondents' claim of insufficient information to admit or deny the allegations in paragraphs 5(e), 7, and 8 of the compliance specification is without merit, and that the individual Respondents, by virtue of their relationships with the Respondent Companies and each other, have access to information to answer those allegations specifically. Accordingly, the General Counsel requests that paragraphs 5(e), 7, and 8 of the compliance specification be deemed to be true.

We address now the Motion for Partial Summary Judgment against the Respondents, Denart Coal and V. Coal. The compliance specification served on the Respondents states that, pursuant to the Board's Rules and Regulations, ''the Respondents shall, within 21 days from the date of this compliance specification, file . . . an original and four (4) copies of an answer to the compliance specification. To the extent that such answer fails to deny allegations of the specification in the manner required under the Board's Rules and Regulations, and the failure to do so is not adequately explained, such allegations shall be deemed to be admitted to be true and the party failing to properly deny said allegations shall be precluded from introducing any evidence controverting them.''

It is clear that Respondents Denart Coal and V. Coal have failed to file an answer to the compliance specification, despite having been advised of the filing requirements, and have failed to respond to the Notice to Show Cause. Further, the Respondents' assertion that their business is defunct and without assets is an inadequate explanation for their omissions. See *Star Grocery Co*., 245 NLRB 196, 197 (1979). We therefore grant the General Counsel's motion and deem all the allegations in the compliance specification to be admitted as true against the Respondents, Denart Coal Co., Inc. and its alter ego V. Coal Co., Inc.

In their memorandum in opposition, the additional Respondents assert that the General Counsel is proceeding on the assumption that the Respondents are able to determine where the General Counsel derived its backpay figures and have access to those sources. The Respondents also claim that the cases cited by the General Counsel in his supporting memorandum are not on point because they do not deal with the records of separate legal entities, as they claim Denart Coal and V. Coal are to them.

With regard to paragraphs 5(e), 7, and 8 of the specification, the Board ordinarily presumes that the various factors entering into the computation of gross backpay are within the knowledge of a respondent employer and therefore finds that a general denial as to these matters is not sufficient. See Section 102.56(b) of the Board's Rules; *Marine Machine Works*, 256 NLRB 15, 17 (1981). The additional Respondent Companies, however, have not been found to constitute a single employer with the original Respondents, Denart Coal and V. Coal. Indeed, the General Counsel acknowledges that the single-employer issue is one that must be resolved at a hearing. Thus, at this stage of the proceeding, it cannot be said that the additional Respondent companies are liable for the backpay.

In arguing that the additional Respondents do possess the requisite knowledge and therefore should have answered paragraphs 5(e), 7, and 8 more specifically, the General Counsel relies on certain findings of the administrative law judge in the underlying unfair labor practice proceeding that show an interrelationship among the various Respondents. The additional Respondents, however, were not parties to that proceeding and the General Counsel does not present any argument why those findings should be binding on them. Further, the additional Respondents have denied the allegation of the compliance specification that the individual Respondents were ''agents'' of the alleged single employer, and the General Counsel has not sought to controvert that denial.[4]

We do not, however, need to address specifically the access, if any, that the additional Respondents may or may not have to the records of the Respondents named in the underlying unfair labor practice case. Resolution of the single-employer issue will, necessarily, resolve the adequacy of the answer to the backpay specifications filed by these additional Respondents.

If all the Respondents are a single employer, then they are all responsible for, and bound by, the actions of the single employer in this proceeding. That includes the failure of the original, named Respondents to provide an adequate answer here and against whom

[4] We note that in this case there is no indication that the pertinent corporate records are in the possession of the General Counsel. Under such circumstances, we do not require the Respondents to demonstrate what efforts, if any, it has taken to obtain the records from the General Counsel. See *Urban Laboratories*, 295 NLRB 1120 (1989).

we have granted partial summary judgment. If they are not a single employer, then there is no basis on this motion for imposing liability on the additional Respondents. In that circumstance, their access to any records necessary to answer the backpay specification is irrelevant; it does not run against them.

As the General Counsel does not seek summary judgment with respect to the single-employer status of the Respondent Companies and the personal liability of the individual Respondents alleged in paragraphs 1–4, and does not seek to preclude the Respondents from controverting allegations of the medical expenses alleged in paragraph 6 of the compliance specification, we shall order a hearing on those issues.

Accordingly, we grant the General Counsel's Motion for Partial Summary Judgment against Respondents Denart Coal Co., Inc. and its alter ego V. Coal Co., Inc., except to the extent that issues raised by the other Respondents have been remanded for a hearing.[5]

ORDER

It is ordered that the General Counsel's Motion for Partial Summary Judgment and to preclude Respondents Laing Enterprises, Vance Trucking, Delores Vance d/b/a D & J Trucking, a sole proprietorship, Don Vance, Don E. Vance, and Michael Vance, from controverting certain allegations of the compliance specification is denied without prejudice.

IT IS FURTHER ORDERED that the General Counsel's Motion for Partial Summary Judgment against Respondents Denart Coal Co., Inc. and its alter ego V. Coal Co., Inc. is granted, except to the extent that issues raised by the other Respondents have been remanded for a hearing.

IT IS FURTHER OREDERED that this proceeding is remanded to the Regional Director for Region 9 for the purpose of arranging a hearing before an administrative law judge, and that the Regional Director is authorized to issue notice thereof.

IT IS FURTHER ORDERED that the administrative law judge shall prepare and serve on the parties a decision containing findings, conclusions, and recommendations based on all of the record evidence. Following the service of the administrative law judge's decision on the parties, the provisions of Section 102.46 of the Board's Rules and Regulations shall apply.

[5] Our ruling does not, however, permit Respondents Denart Coal Co., Inc. and its alter ego V. Coal Co., Inc. to participate in that hearing. See *Transportation by La Mar*, 281 NLRB 508, 510 fn. 6 (1986).